

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

CYNTHIA TREVINO  
PETITIONER/ PLAINTIFF

v.

CONDOLEEZZA RICE, SECRETARY OF STATE,  
TIMOTHY M. WIESNET, REGIONAL DIRECTOR,  
HOUSTON PASSPORT AGENCY,  
MICHAEL CHERTOFF, SECRETARY, DEPARTMENT OF  
HOMELAND SECURITY,  
and  
UNITED STATES OF AMERICA,  
RESPONDENTS/ DEFENDANTS

PETITION FOR WRIT OF HABEAS CORPUS  
AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Cynthia Trevino , ("Ms. Trevino"), files the instant Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief, seeking review of an adverse agency action, under 28 U.S.C. §1331 (federal question), with the Administrative Procedure Act, 5 U.S.C. §702 et seq; 28 U.S.C. §2201 (Declaratory Judgment Act) and 8 U.S.C. §1503, (denial of rights and privileges as U.S. Citizen).

I. JURISDICTION AND VENUE

1. Jurisdiction lies under 28 U.S.C. §§2241 (habeas corpus); 1331 (federal question), 2201 et seq. (Declaratory Judgment Act), and 8 U.S.C. §1503, (denial of rights and privileges as a U.S. Citizen).

2. Ms. Trevino's application for a United States Passport, which is the subject of the instant action, was made at the U.S. Post Office in Brownsville, Texas, within the jurisdiction of the Court.

3. The denial of Ms. Trevino's application for a United States passport, imposes significant restraints on her liberty which are not shared by the populace at large. This constitutes custody, within the meaning of *Jones v. Cunningham*, 371 U.S. 236,240 (1963), for purposes of 28 U.S.C. §2241.

II. THE PARTIES

4. Petitioner Cynthia Trevino is a United States Citizen. She was

born in Brownsville, Texas on April 12, 1982.

5. Respondent Condoleezza Rice is the duly appointed Secretary of State of the United. Respondent Respondent Michael Chertoff is the Secretary of the Department of Homeland Security. All are sued in their official capacities only. The United States of America is also a named Respondent.

### **III. THE FACTS**

6. Cynthia Trevino was born Brownsville, Texas on April 12, 1982. Her birth assisted by a midwife, Olivia Berrera Salazar. At that time, her parents had local crossing cards, and crossed freely between their home in Matamoros, Mexico, and Brownsville, Texas.

7. Shortly after her birth, Ms. Trevino's mother, Maria Teresa Vela, returned with her to their home in Matamoros, Mexico. On May 25, 1982, the midwife who had attended her birth registered her, showing that she was born April 12, 1982, in Brownsville, Texas.

8. On December 5, 1982, Ms. Trevino was baptized in Matamoros, Mexico. Her baptismal certificate also shows her date of birth as April 12, 1982, in Brownsville, Texas. Ms. Trevino also received vaccinations from the Texas Department of Health, beginning on February 3, 1983, and continuing through May 20, 1998.

9. On February 14, 1986, Ms. Trevino's parents attended a visa appointment at the U.S. Consulate in Monterrey, Mexico, and were granted immigrant visas. On February 17, 1986, they entered the United States at Brownsville, Texas, as lawful permanent residents. At that time, they surrendered their local crossing cards.

10. During the visa process, Ms. Trevino's parents disclosed to the U.S. Consul that she had been born in Brownsville, Texas. Had she not been born in the U.S., Ms. Trevino could have immigrated with her parents. During his naturalization process, Ms. Trevino's father also disclosed to the Immigration and Naturalization Service that she had been born in Brownsville, Texas.

11. On January 5, 2007, Ms. Trevino applied for a U.S. passport at the post office in Brownsville, Texas. By letter dated February 14, 2007, Respondent Wiesnet denied that application.

12. Respondent Wiesnet alleges that an affidavit by the midwife who delivered Ms. Trevino, asserting that her birth was falsely registered in Texas, came into INS' hands in September of 1984. But at no time did anyone at the U.S. Consulate, or the Immigration and Naturalization Service, make any attempt to advise her parents of this fact, or otherwise challenge the claim that Ms. Trevino had been born in Brownsville, Texas, until Respondent Wiesnet denied Ms. Trevino's application for a U.S. passport on February 14, 2007.

13. Had Ms. Trevino's parents received timely notice of the alleged affidavit challenging her citizenship, they would have been able to obtain witnesses and other forms of proof controverting that affidavit, which evidence is no longer available.

#### **IV. CAUSES OF ACTION**

##### **A. HABEAS CORPUS**

The inability to travel freely, and to participate in programs available only to U.S. citizens, which results from Respondents' denial of Ms. Trevino's application for a United States passport, constitute a significant restriction on her liberty. Because these restrictions are not shared by otherwise similarly situated U.S. citizens, this constitutes unlawful custody cognizable in habeas corpus under 28 U.S.C. §2241.

##### **B. DECLARATORY JUDGMENT**

Cynthia Trevino has been denied rights and privileges claimed as a national of the United States, within the meaning of 8 U.S.C. §1503, by virtue of the denial of her application for a United States Passport. Therefore, Ms. Trevino is entitled to bring a declaratory judgment action, seeking a declaration that she is, indeed, a United States citizen, under 8 U.S.C. §1503.

##### **C. REVIEW OF ADVERSE AGENCY ACTION**

Petitioner also seeks review of the adverse agency action, denying her application for a U.S. Passport, under the Administrative Procedure Act. Said denial is arbitrary, capricious, contrary to law, and unsupported by substantial evidence, within the meaning of 5 U.S.C. §706, because she was not given notice of the alleged adverse evidence, or a hearing with respect to her claim. Further, Defendants should be estopped from relying on the alleged affidavit of the midwife, where more than twenty years have lapsed since it came into their possession, and they never made any attempt until just now to advise Petitioner or her parents of its existence.

#### IV. PRAYER FOR RELIEF

WHEREFORE, it is respectfully requested that this Court grant the requested writ, and issue a Declaratory Judgment declaring Ms. Trevino to be a U.S. citizen, and a permanent injunction, enjoining Respondent Rice from not issuing her a U.S. passport. In the Alternative, it is urged that the case be remanded to the State Department, with instructions to provide a Due Process hearing on her application. It is also requested that the Court grant such other and further relief as the Court may consider appropriate.

Respectfully Submitted,

s/ Lisa S. Brodyaga, Attorney at Law  
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#### VERIFICATION

I, Lisa S. Brodyaga, certify under penalty of perjury that I am familiar with the history of the above case, and that the foregoing is true and correct to the best of my knowledge and belief.

s/ Lisa S. Brodyaga

#### CERTIFICATE OF SERVICE

I certify that a courtesy copy of the foregoing was electronically served on Rene Benavides AUSA, on December 15, 2007.

s/ Lisa S. Brodyaga